IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3429 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVIND SHIVLAL SONI

Versus

R K SINGLA, OR HIS SUCCESSOR IN OFFICE DY.DIRECTOR

Appearance:

MR AD SHAH FOR MR PS CHAMPANERI for Petitioner

MR DN PATEL for Respondent No. 1

MR AJ DESAI APP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/06/2001

C A V JUDGEMENT

1. Rule. Mr. N.D. Patel, learned advocate appears and waives service of notice of rule on behalf of respondent No.1 and Mr. A.J. Desai, learned A.P.P.

appears and waives service of notice of rule on behalf of respondent No.2.

2. By filing this petition under Section 439 of the Code of Criminal Procedure ('the Code' for short), the petitioner who is in judicial custody pending Sessions Case No. 162 of 1994 before the Additional Sessions Judge (Court No.5), Ahmedabad for the offences punishable under Sections 22, 23, 24 and 29 of the Narcotic Drugs and Psychotropic Substances Act ('the Act' for short) read with Sections 120B and 120A of the Indian Penal Code ('IPC' for short), has prayed to enlarge him on regular bail.

3. Pending trial the petitioner had made an application for bail which was granted by the City Sessions Court vide order dated January 16, 1995. That order was challenged by the original complainant by filing Misc. Criminal Application No. 671 of 1995 in the High Court of Gujarat. The Court (Coram: J.N. Bhatt, J.) by an exhaustive judgment dated March 8, 1995, roughly running into 26 pages, had cancelled the bail granted to the petitioner after recording cogent reasons. The said judgment was challenged by the petitioner before the Supreme Court in Special Leave Petition (Criminal) No. 2100 of 1995. Upon hearing the learned counsel for the petitioner, the Supreme Court dismissed the SLP vide order dated July 13, 1995. Since the cancellation of bail, the petitioner is in judicial custody.

4. The main ground pleaded by the petitioner for grant of bail is that there is considerable delay in the trial and as the right of speedy trial guaranteed under Article 21 of the Constitution is violated, he should be released on bail. Another ground for grant of bail advanced is that the main accused i.e., Bipin Panchal is enlarged on temporary bail and, therefore, on principle of parity guaranteed under Article 14 of the Constitution, the petitioner is entitled to be released on bail.

5. Mr. A.D. Shah, learned counsel for the petitioner, has argued that as the right of speedy trial guaranteed under Article 21 of the Constitution is violated, the petition submitted by the petitioner should be granted. It was contended that as the main accused is released on temporary bail, the petitioner should also be granted regular bail or in the alternative he also should be released on temporary bail. To buttress his arguments, the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in

the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and others, 1995 SCC (Cri.) 39 and the judgment rendered by my learned Brother Justice C.K. Buch in Criminal Misc. Application No. 6523 of 2000 with Criminal Misc. Application No.1722 of 2001 (copy is annexed at page 56) releasing the main accused on temporary bail for a period of 90 days.

6. Mr. D.N. Patel, learned counsel appearing for the original complainant, submitted that in view of the mandatory provisions of section 37 of the Act the petitioner is not entitled to be released on bail. It was argued that the grant of bail to the petitioner would amount to reviewing the order passed by the High Court in which the bail granted to the petitioner was cancelled which was confirmed by the Supreme Court by dismissing the SLP filed by the petitioner and as there is no change in circumstance, the present petition should not be entertained. It was further argued by him that so far as the plea of temporary bail is concerned, no case is made out by the petitioner to enlarge him even on temporary bail. In support of his aforesaid submissions, he has placed reliance on the following decisions:

i) Union of India through Central Bureau of Narcotics Commissioner, Lucknow v. Aharwa Deen, 2000 Cri.L.J. 3526;

ii) Union of India v. Ikram Khan and others JT 2000 (2) SC 280;

(iii) Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy, JT 2000 (9) SC 29.

7. I have heard the learned counsel for the parties. I have also perused the documents produced alongwith the petition and the judgments cited at the bar.

8. It is true that speedy trial is a right guaranteed to under-trial prisoners under Article 21 of the Constitution and deprivation of personal liberty without ensuring speedy trial in a given case violates the provisions of Article 21 of the Constitution. However, while considering the grievance raised by the under-trial prisoners regarding the breach of the provisions of Article 21 of the Constitution, relevant facts emerging from the record cannot be ignored. The glaring facts are that the learned City Sessions Judge has framed charge against the petitioner for the offences punishable under Sections 22, 23, 24 and 29 of the Act

read with Section 102B and 120A of the IPC and the maximum punishment provided for the said offences is rigorous imprisonment for 20 years. As noted earlier, the petitioner was granted bail by the City Sessions Court. But the bail granted to the petitioner is cancelled by the High Court and the order passed by the High Court is confirmed by the Supreme Court. The observations made by the High Court while cancelling the bail granted to the petitioner cannot be ignored and if they are taken into consideration, I am of the view that the petitioner is not entitled to regular bail on the ground that the trial in his case has not been held speedily.

9. Moreover, in the case of Supreme Court Legal Aid Committee (supra) there was a delay in constitution of special court for trying the offences punishable under the NDPS Act and this was found by the Supreme Court as frustrating the objective of Section 36 (1) of the Act and Section 309 of the Code. Further it was found by the Supreme Court that under-trial prisoners were languishing in jail for a period exceeding half of the punishment provided under the Act. In these circumstances, the Supreme Court directed the release on bail those under-trial prisoners who were languishing in jail for no fault on their part. In my view, the principle laid down in the said decision cannot be made applicable to the facts of the present case because the special court is already constituted to try the offence which the petitioner is alleged to have committed and the petitioner is not in jail for a period exceeding half of the punishment provided under the Act.

10. It is relevant and most important to note that in Bipin Shantilal Panchal v. State of Gujarat, AIR 2001 SC 1158, the Supreme Court has deprecated the practice followed by the Sessions Court to first decide any objection raised as to admissibility of evidence and then proceed further with the trial because it impedes steady and swift progress of trial. This is the very case in which Bipin Shantilal Panchal is being tried for offences punishable under Sections 22, 23, 24 and 29 of the NDPS Act alongwith the present petitioner and others. It is pertinent to note that though the Supreme Court in the above quoted reported decision noticed that because of the wrong practice adopted by the trial Court there was delay in trial but the Supreme Court did not grant bail to Bipin Shantilal Panchal at all even on the basis of the submission that there is a considerable delay in trial of the case and his right to speedy trial guaranteed under Article 21 of the Constitution is

violated and merely reserved liberty to move bail application which was directed to be disposed of by the Court concerned on its own merits. Therefore, the petitioner cannot be granted any relief on the basis of the so-called breach of Article 21 of the Constitution.

11. Further, bail for the offences punishable under the Act cannot be granted in breach of the provisions of section 37 of the said Act. In view of the charges framed by the City Sessions Court against the petitioner and the documents forwarded by the investigating agency alongwith the charge-sheet, it is difficult to conclude that there are reasonable grounds for believing that the petitioner is not guilty of those offences. This is the view expressed by the Supreme court in i) Union of India through Central Bureau of Narcotics Commissioner, Lucknow v. Aharwa Deen (supra), ii) Union of India v. Ikram Khan and others (supra) and (iii) Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy (supra) and, therefore, in view of the provisions of Section 37 of the Act, the petitioner cannot be granted regular bail.

12. The above discussion makes it clear that no ground is made out by the petitioner to grant him bail on the ground of alleged breach of the provisions of Article 21 of the Constitution.

13. Coming to the plea of parity, I find that my learned brother Justice C.K. Buch has not granted regular bail to the so-called main accused of the case and that prayer has been specifically rejected. However, the judgment rendered by my learned brother Justice C.K. Buch makes it evident that a view was expressed by that Court that temporary bail could have granted to the petitioner in that case but regular bail was not granted considering the sensitivity of the crime and gravity of the offence and the fact that the trial is gradually progressing. In these circumstances, the learned Judge considering the prayer made on behalf of the petitioner to enlarge him on temporary bail has granted temporary bail. Here, in this case, I have earlier positively held that the petitioner is not entitled to regular bail. The temporary bail for temporary purpose can be granted only if good case is made out. For example, sickness of the prisoner which cannot be cured at the jail hospital, Civil Hospital or in any hospital in the city and sickness or death of a near or dear relative which can be attended by the prisoner only. The phrase "temporary bail" implies that the bail is granted for a temporary period for a particular purpose and on the achievement of the said purpose the prisoner has to surrender.

Releasing on temporary bail pending trial when the prosecution witnesses are being examined is bound to have deleterious effect on the prosecution case and the more stringent the punishment there are more chances of attempt being made to win over the witnesses. In these circumstances, temporary bail cannot be granted for a mere asking which can be granted only on a good case being made out by the prisoner. No ground worth the name is stated by the petitioner as to why he should be enlarged on temporary bail.

14. I further find from the decisions of the Supreme Court that where the Supreme Court has noticed breach of Article 21 of the Constitution - fundamental right guaranteed to prisoners for speedy trial - the Supreme Court has enlarged such prisoners on bail and has not found any via-media by directing release of such prisoners on temporary bail and, therefore, in my view, the petitioner cannot be released on temporary bail in absence of factual data which must be considered by the Court before granting temporary bail and more so when the petitioner has failed to show breach of the provisions of Article 21 of the Constitution.

15. By exercising the discretion in one case a learned Single Judge of this court has directed to release some of the accused on temporary bail, one cannot claim that another Judge of this Court hearing application for temporary bail should also exercise discretion in same manner as is exercised by another learned Single Judge of this Court irrespective of the fact scenario.

16. In these circumstances, I am of the confirmed view that the petitioner is not entitled to any relief based on the principle of parity as well and cannot be granted temporary bail.

17. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged.

(A.M. Kapadia, J.)

(karan)